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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/830,250	09/13/2001	John Downing Curry	7315	3328

27752 7590 04/20/2004

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
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EXAMINER

PASCUA, JES F

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 04/20/2004

13

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/830,250

Applicant(s)

CURRY ET AL.

Examiner

Jes F. Pascua

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 and 23-43 is/are pending in the application.
- 4a) Of the above claim(s) 9-15, 27-41 and 43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 16-20, 23-25 and 42 is/are rejected.
- 7) ☒ Claim(s) 8 and 26 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4/1/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Group I in Paper No. 9 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

As a note, elected claim 38 is directed the "kit" of non-elected Group II. Therefore, the Examiner has withdrawn claim 38 from consideration. Furthermore, the dependency from "claim 5" is believed to be a typographical error.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-4, 6, 24 and 42 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Taylor.

As a note, the recitation that flexible wrap container is "for use in a washing machine" has not been given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951).

4. Claim 20 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Wirth.

The recitation that flexible wrap container is "for use in a washing machine" has not been given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951).

5. Claims 1-5, 24 and 42 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by French et al.

The recitation that flexible wrap container is "for use in a washing machine" has not been given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-contained description of the structure not

depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 7 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor or French et al.

Taylor and French et al. each disclose the claimed invention except for the flexible panel being constructed from a material selected from the group consisting of woven polyester, woven nylon or a combination thereof. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use material selected from the group consisting of woven polyester, woven nylon or a combination thereof to construct the flexible panel of Taylor or French et al., since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

8. Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Geysel.

Geysel discloses the claimed invention except for the strap 10 having a fastening device. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the strap of Geysel with a fastening device since it was known in the art that fastening devices on straps facilitate securing the strap about the container.

9. Claims 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over MacCormack et al.

MacCormack et al. discloses the claimed invention except for the strap 19 having a fastening device. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the strap of Geysel with a fastening device since it was known in the art that fastening devices on straps facilitate securing the strap about the container.

Allowable Subject Matter

10. Claims 8 and 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

11. Applicant's arguments filed 02/04/04 have been fully considered but they are not persuasive.

In response to applicant's argument that Taylor does not teach or suggest a flexible wrap container which includes at least one and a first fastening device attached to the strap for securing the wrap container in a roll-like shape, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). In this case, Taylor discloses straps 20 and first fastening devices 21 attached to straps 20. Having met applicant's claimed structure, the straps and fasteners of Taylor is inherently capable of securing the wrap container in a "roll-like shape" to the same degree as claimed. Furthermore, there is no explicit recitation in applicant's specification that the compact configuration of the Taylor wrap container, as shown by Figs. 1 and 2, is not a "roll-like shape" (emphasis added).

Applicant's argument that Wirth does not teach or suggest a fence comprising a plurality of loops attached to a flexible side panel is opinion. Wirth clearly shows in Fig. 2 a plurality of loops 58 attached along left and right margins 14, 16 of flexible panel 12, which plurality of loops 58 are formed into a plurality of rows. Margins 14, 16 of Wirth meet the structure of applicant's "flexible fence" to the same degree as claimed.

Regarding the rejection of the claims 1-5, 24 and 42 as being anticipated by French et al., applicant remarks that the blanket and storage pouch of French et al. are

separate components. In response to applicant's argument that French et al. does not suggest applicant's flexible wrap container, a claim is anticipated if each element of the claim is found, either expressly described or under principles of inherency, in a single prior art reference, or that the claimed invention was previously known or embodied in a single prior art device or practice. In this case, French et al. discloses each element of applicant's claims. Applicant has failed to specifically point out what elements in the claims are missing from French et al.

Applicant argues that neither Taylor nor French et al. provide the suggestion of making their wrap containers from a material selected from the group consisting of woven polyester, woven nylon, or a combination thereof. Applicant has failed to remark why it would not have been obvious to a person having ordinary skill in the art at the time the invention was made to make the Taylor or French et al. Wrap containers from a material selected from the group consisting of woven polyester, woven nylon, or a combination thereof as actually proposed by the rejection of claims 7 and 25. Applicant has misread the rejection.

Regarding applicant's argument that it would not have been obvious to provide the strap of Geysel with a fastening device, the Examiner finds no explicit statement in Geysel that a fastening device is neither provided nor desired on the strap.

Regarding applicant's argument that MacCormack et al. does not teach a fastening device, applicant, again, has misread the rejection. The Examiner does not propose that MacCormack et al. teaches it would have been obvious to provide a fastening device. The 10/31/03 Office action proposes that a person having ordinary

skill in the art would have found it obvious to provide the wrap container of MacCormack et al. with a fastening device.

Conclusion

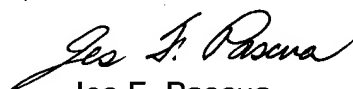
12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 703-308-1153. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jes F. Pascua
Primary Examiner
Art Unit 3727

JFP